

1 **ORRICK, HERRINGTON & SUTCLIFFE LLP**

2 DOUGLAS H. MEAL (*admitted pro hac vice*)

3 dmeal@orrick.com

4 REBECCA HARLOW (CA BAR NO. 281931)

5 rharlow@orrick.com

6 MATTHEW D. LABRIE (*admitted pro hac vice*)

7 mlabrie@orrick.com

8 The Orrick Building

9 405 Howard Street

10 San Francisco, CA 94105-2669

11 Telephone: +1 415 773 5700

12 Facsimile: +1 415 773 5759

13 Attorneys for Defendant

14 ZOOSK, INC.

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 JUAN FLORES-MENDEZ, an individual and
18 TRACY GREENAMYER, an individual, and
19 on behalf of classes of similarly situated
20 individuals,

21 Plaintiffs,

22 v.

23 ZOOSK, INC., a Delaware corporation,

24 Defendant.

Case No. 3:20-cv-4929-WHA

**DECLARATION OF DOUGLAS H.
MEAL IN SUPPORT OF
DEFENDANT'S OPPOSITION TO
PLAINTIFFS' MOTION TO STRIKE**

The Honorable William Alsup

Date: July 14, 2022

Time: 12:30 p.m.

Courtroom: No. 12, 19th Floor

1 I, Douglas H. Meal, declare:

2 1. I am a member of the Bar of the Commonwealth of Massachusetts and am admitted
3 *pro hac vice* in the above-captioned action as counsel for Defendant, Zoosk, Inc. (“Zoosk”). I make
4 this declaration in support of Defendant’s Opposition to Plaintiffs’ Motion to Strike Untimely
5 Disclosed Evidence and Witnesses. I make this declaration based on my own personal knowledge
6 and/or my examination of records that are kept by my firm in the regular course of business. If
7 called to testify as a witness to these matters, I could do so competently.

8 2. Plaintiffs Juan Flores-Mendez and Amber Collins filed the original Class Action
9 Complaint in July 2020 after Zoosk confirmed it had been the victim of an intrusion into its network
10 by unauthorized criminal actors (the “Intrusion”). ECF No. 1.

11 3. Zoosk responded to two sets of interrogatories and three sets of requests for
12 production of documents. Plaintiffs deposed Ethan Tuttle on December 2, 2021 and June 17, 2022,
13 Conor Callahan on December 16, 2021 and June 24, 2022, and Grant Kessler on February 10, 2022.
14 Plaintiffs never sought to depose Constantin Garcev or Mathis Bendyk.

15 4. Plaintiff Collins failed to participate meaningfully in discovery and violated the
16 Court’s discovery order (due, in part, to the fact that she had been arrested and was in custody on
17 various drug-related felony charges). *See* ECF No. 139.

18 5. Zoosk therefore moved to dismiss Plaintiff Collins. ECF No. 129.

19 6. Plaintiffs’ counsel then filed a third amended class action complaint, ECF No. 142,
20 immediately followed by a Motion to Substitute Class Representative (“Substitution Motion”),
21 which sought leave to amend or intervene Tracy Greenamyre as a named plaintiff, which motion
22 Zoosk opposed. ECF Nos. 144, 149.

23 7. Following briefing and argument, the Court granted the Substitution Motion and
24 dismissed Plaintiff Collins with prejudice. *See* ECF No. 162.

25 8. On April 29, 2022, Plaintiffs filed a Fourth Amended Class Action Complaint
26 (“4AC”) and named Plaintiff Flores-Mendez and Plaintiff Greenamyre as the putative class
27 representatives. ECF No. 191.

1 9. On the same day that the 4AC was filed, the Court issued a scheduling order that
2 confirmed that (1) fact discovery ended on April 29, 2022 except for approximately four weeks for
3 Zoosk to take discovery from Plaintiff Greenamyre, (2) opening expert reports were due April 29,
4 2022—i.e., simultaneous with the filing of the Fourth Amended Complaint and the end of fact
5 discovery; (3) opposition expert reports were due June 1, 2022; and (4) reply expert reports were
6 due June 8, 2022. ECF No. 192.

7 10. Plaintiffs served reports by two experts, Gary Olsen and Matthew Strebe, on April
8 29, 2022.

9 11. While Mr. Strebe was preparing his report, Plaintiffs' counsel asked that he be given
10 access to the data set that was found on the dark web. Zoosk granted Mr. Strebe access on April
11 25, 2022 and terminated that access on June 27, 2022 due to the cost of maintaining the instance
12 that had been created for him.

13 12. Plaintiff Greenamyre responded to interrogatories and requests for production of
14 documents on May 11, 2022.

15 13. Zoosk amended its Initial Disclosures on May 13, 2022.

16 14. Plaintiff Greenamyre filed a Motion for Class Certification, as the lone class
17 representative, on May 20, 2022. ECF No. 200.

18 15. Plaintiff Greenamyre was deposed on May 25, 2022.

19 16. Zoosk served expert reports by four experts – Bret Padres, Brian Ellman, Mahmoud
20 El Halabi, and Chris Cronin—on June 1, 2022.

21 17. Also on June 1, 2022, Zoosk produced a spreadsheet Bates stamped
22 ZOOSK00002773 containing data that Mr. Ellman had used in his expert report, which Zoosk
23 produced in order to satisfy its obligation to identify the facts or data Mr. Ellman considered in
24 forming the opinions expressed by him in his expert report.

25 18. Plaintiffs' experts both served reply reports on June 8, 2022.

26 19. Zoosk opposed the Motion for Class Certification on June 10, 2022. ECF No. 206.

27 20. Plaintiff served her Reply in Support of Motion for Class Certification on June 24,
28

2022. ECF No. 217.

21. Contemporaneous with her Reply, Plaintiff served the instant Motion to Strike Untimely Disclosed Evidence and Witnesses. ECF No. 214.

22. Attached hereto as **Exhibit A** is a true and correct copy of Plaintiffs' First Set of Interrogatories, served on May 18, 2021.

23. Attached hereto as **Exhibit B** is a true and correct copy of Plaintiffs' First Document Requests, served on May 18, 2021.

24. Attached hereto as **Exhibit C** is a true and correct copy of Zoosk's Responses to Plaintiffs' First Set of Interrogatories, served on June 24, 2021.

25. Attached hereto as **Exhibit D** is a true and correct copy of Zoosk's Amended Responses to Plaintiffs' First Set of Interrogatories, served on October 8, 2021.

26. Attached hereto as **Exhibit E** is a true and correct copy of excerpts of the Deposition Transcript of Grant Kessler dated February 10, 2022.

27. Attached hereto as **Exhibit F** is a true and correct copy of the Declaration of Matthew Strebe in Support of Plaintiffs' Motion for Class Certification served on April 29, 2022.

28. Attached hereto as **Exhibit G** is a true and correct copy of Plaintiff Greenamyre's Responses to Interrogatories served on May 11, 2022.

29. Attached hereto as **Exhibit H** is a true and correct copy of excerpts of the Deposition Transcript of Plaintiff Tracy Greenamyre dated May 25, 2022.

30. Attached hereto as **Exhibit I** is a true and correct copy of the Reply Report of Gary D. Olsen served on June 8, 2022.

31. Attached hereto as **Exhibit J** is a true and correct copy of a document produced by Zoosk bearing Bates stamp ZOOSK00000812.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 8th day of July 2022, at Boston, Massachusetts.

/s/ Douglas H. Meal
DOUGLAS H. MEAL

DECL. OF DOUGLAS H. MEAL ISO
DEFENDANT'S OPPOSITION TO
PLAINTIFFS' MOTION TO STRIKE
3:20-cv-4929-WHA